

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

IN RE: \* CASE NO. 12-51127  
\*  
PICCADILLY RESTAURANTS, LLC, *et al.*, \* (JOINT ADMINISTRATION)<sup>1</sup>  
\*  
DEBTORS \* CHAPTER 11  
\*  
\* \* \* \* \* \* \* \* \* \* \* JUDGE ROBERT SUMMERHAYS

**LIMITED OBJECTION OF BRIXMOR PROPERTY GROUP, INC., TO DEBTORS' MOTION FOR AN ORDER, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE, (1) AUTHORIZING THE DEBTORS TO ASSUME CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY, AND (2) SATISFY CURE AMOUNTS IN RESPECT THEREOF**

TO THE HONORABLE ROBERT SUMMERHAYS,  
UNITED STATES BANKRUPTCY JUDGE:

Brixmor Property Group, Inc. (“Brixmor”), by and through its undersigned attorneys, makes this Limited Objection (the “Objection”) to Debtors<sup>2</sup> Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, (1) Authorizing the Debtors to Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof (the “Motion”), and in support thereof avers:

1. Brixmor is the owner or agent for the owner of the Springdale Mall shopping center (“Springdale”), in which Debtors operate one of their restaurants<sup>3</sup> pursuant to a written lease (the “Lease”) which is affected by the relief sought by the Motion.

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<sup>1</sup> Jointly administered with *In re Piccadilly Food Service, LLC*, 12\_51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12\_51129 (Bankr. W.D. La. 2012).

<sup>2</sup> The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

<sup>3</sup> The restaurant at Springdale operates as a Morrison’s Cafeteria.

2. The Springdale premises is a premises located in a shopping center, as that term is used in 11 U.S.C. § 365(b)(3). See *In Re: Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

3. On or about March 4, 2013, Debtors filed the Motion (D.I. 532) seeking approval of the assumption of certain nonresidential real property leases and establishing the cure amounts due with regard to such assumption. Brixmor objects only to the Cure Amount set forth in the Motion and, to a limited extent, the provision of adequate assurance of future performance.

#### Cure Amounts

4. Set forth below is Brixmor's monetary claim for rentals due, exclusive of any sums which have become due or been paid after March 14, 2013. The claim set forth is the base cure claim amount subject to additional qualifications and modifications (such as reimbursement of attorney's fees) as more fully set forth below.

Shopping Center	City/State	DEBTOR'S CURE \$	LANDLORD'S CURE \$	EX.
Springdale Mall	Mobile, AL	\$31,894.59	\$44,677.66	A

5. Brixmor further avers that additional amounts, not as yet known, may also be due with regard to calendar years 2011, 2012 and 2013, such as year-end adjustments to various items including, but not limited to, real estate taxes, common area maintenance ("CAM"), percentage rent and insurance. Section 365(b) requires that a debtor cure all defaults in conjunction with a lease assumption. Since certain accrued, unbilled items may not have been invoiced to date, there can be no default for the failure to pay same. (See ¶¶ 8 & 9, *infra*)

6. Brixmor further requests that it be reimbursed for all of its actual pecuniary losses including, but not limited to, attorney's fees and costs expended with regard to Debtors' bankruptcy proceedings.

7. In addition to the monetary obligations that Debtors must satisfy under Section 365 of the Bankruptcy Code, the Springdale Lease provides that Debtors must indemnify and hold Brixmor harmless with regard to existing claims as well as with regard to events which may have occurred pre-assumption but which have not been made known to Brixmor or Debtors until some time post-assumption. Accordingly, either Debtors must specifically assume this obligation or Debtors must be required to evidence, or obtain adequate insurance in order to guaranty, (by way of purchase of a "tail" or otherwise) that their indemnity responsibilities will be met. Claims for indemnity may include, but are not limited to, claims for personal injuries which occur at the leasehold, where Brixmor is joined as a party defendant, damage and destruction to the property by Debtors or their agents, claims for environmental damage or environmental clean up, *etc.*

**Liabilities for Year-End Adjustments; Adequate Assurance**

8. The lessee under the Springdale Lease is responsible for year-end adjustments to items such as CAM, insurance, percentage rent, taxes and other items that are paid during the course of the year on an estimated basis. Generally the year-end adjustment, or true-up, of these categories does not take place until several months after the close of the landlord's fiscal year. Since Section 365(b) only requires that debtors cure defaults under their leases, and since there can be no default for failure to pay an amount that has not as yet been billed, unpaid year-end adjustments, and those adjustments that may be accruing for the current lease year, are not a part of the cure obligation of the Debtors. The obligation to pay the year-

end adjustments is, however, certainly a part of the obligation to provide adequate assurance of future performance.

9. Brixmor, therefore, requests that language be inserted into any assumption order to provide that Debtors remain liable for all unpaid year-end 2011, 2012 and 2013 adjustments, whether accruing prior to or after the effective date of assumption of the Springdale Lease, when such charges become due in accordance with the terms of the Lease.

**Reservation of Rights**

10. Brixmor reserves the right to make such other and further objections as may be appropriate.

**Joinder in Other Landlord Objections**

11. Brixmor hereby joins in the objections filed by Debtors' other landlords to the extent that such objections are not inconsistent with the provisions hereof.

**WHEREFORE**, Brixmor pray for relief consistent with the foregoing objections; and for such other and further relief as may be just and proper under all of the circumstances

Dated: March 18, 2013  
Philadelphia, PA

Respectfully submitted,

/s/ David C. Pollack  
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and

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**Attorneys for Brixmor Property Group, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Limited Objection of Brixmor Property Group, Inc. to Debtors' Motion for an Order, Pursuant to Section 365 of the Bankruptcy Code, (1) Authorizing the Debtors to Assume Certain Unexpired Leases of Nonresidential Real Property, and (2) Satisfy Cure Amounts in Respect Thereof has been duly served upon those parties, including Debtors' counsel, receiving electronic notification via the Court's CM/ECF System on this 18th day of March, 2013

/s/ David L. Pollack  
DAVID L. POLLACK

**Springdale Mall  
Mobile, AL**

<u>DESCRIPTION</u>	<u>BILLING DATE</u>	<u>AMOUNT</u>
2010 Percentage Rent	4/27/2011	\$15,336.20
2011 Percentage Rent	1/20/2012	\$2,509.46
September 2012 Rent and Additional Rent	9/1/2012	\$26,832.00
	<u>Total</u>	<u>\$44,677.66</u>

**EXHIBIT A**